

David A. Ericksen (Bar No. 153923)
MURTAUGH TREGLIA STERN &
DEILY LLP
2603 Main Street, Penthouse
Irvine, California 92614-6232
(949) 794-4000/FAX (949) 794-4099
dericksen@murtaughlaw.com

Attorneys for Defendant/Cross-
Defendant MCINTOSH &
ASSOCIATES ENGINEERING, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Adavco, Inc., a California corporation

Plaintiff,

v.

Deertrail Development LLC, a
California limited liability company,
New Gen Engineering Group, Inc., a
California corporation, McIntosh &
Associates Engineering, Inc., a
California corporation, Does 1-10.

Defendants.

CASE NO. 1:23-cv-00695-JLT-SKO

Assigned to:

Hon. Jennifer L. Thurston (presiding)
Hon. Sheila K. Oberto (referral)

ANSWER BY MCINTOSH &
ASSOCIATES ENGINEERING, INC.
TO NEW GEN ENGINEERING
GROUP, INC.'S CROSS-COMPLAINT

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant and
Cross-defendant McIntosh, INC. (hereinafter "McIntosh") files this Original
Answer to the Cross-Complaint of NEW GEN ENGINEERING GROUP, INC.
(hereinafter "New Gen"), as follows:

I. ANSWER

1. Answering Paragraph 46: McIntosh denies each and every
allegation contained therein generally and specifically, and each and every part
thereof, related to McIntosh. As to the remaining allegations, including
allegations as to other defendants, McIntosh alleges that it does not have
sufficient information or belief on the subject to enable it to answer any of the

1 allegations in those paragraphs and, basing its denial on that ground, denies each
2 and every allegation contained therein generally and specifically in each and
3 every part thereof.

4 2. Answering Paragraph 47: McIntosh denies each and every
5 allegation contained therein generally and specifically, and each and every part
6 thereof, related to McIntosh. As to the remaining allegations, including
7 allegations as to other defendants, McIntosh alleges that it does not have
8 sufficient information or belief on the subject to enable it to answer any of the
9 allegations in those paragraphs and, basing its denial on that ground, denies each
10 and every allegation contained therein generally and specifically in each and
11 every part thereof. Without waiver of the preceding general denial, this
12 answering defendant admits that that this court has subject matter jurisdiction
13 over the copyright claims in this action.

14 3. Answering Paragraph 48: McIntosh denies each and every
15 allegation contained therein generally and specifically, and each and every part
16 thereof, related to McIntosh. As to the remaining allegations, including
17 allegations as to other defendants, McIntosh alleges that it does not have
18 sufficient information or belief on the subject to enable it to answer any of the
19 allegations in those paragraphs and, basing its denial on that ground, denies each
20 and every allegation contained therein generally and specifically in each and
21 every part thereof. Without waiver of the preceding general denial, this
22 answering defendant admits that that this court has personal jurisdiction over this
23 answering defendant and that this defendant does business in California.

24 4. Answering Paragraph 49: McIntosh denies each and every
25 allegation contained therein generally and specifically, and each and every part
26 thereof, related to McIntosh. As to the remaining allegations, including
27 allegations as to other defendants, McIntosh alleges that it does not have
28 sufficient information or belief on the subject to enable it to answer any of the

1 allegations in those paragraphs and, basing its denial on that ground, denies each
 2 and every allegation contained therein generally and specifically in each and
 3 every part thereof. Without waiver of the preceding general denial, this
 4 answering defendant admits that that venue is proper over this action and that
 5 this defendant does business in Bakersfield, California within the Eastern
 6 District.

7 5. Answering Paragraph 50: McIntosh denies each and every
 8 allegation contained therein generally and specifically, and each and every part
 9 thereof, related to McIntosh. As to the remaining allegations, including
 10 allegations as to other defendants, McIntosh alleges that it does not have
 11 sufficient information or belief on the subject to enable it to answer any of the
 12 allegations in those paragraphs and, basing its denial on that ground, denies each
 13 and every allegation contained therein generally and specifically in each and
 14 every part thereof.

15 6. Answering Paragraph 51: McIntosh denies each and every
 16 allegation contained therein generally and specifically, and each and every part
 17 thereof, related to McIntosh. As to the remaining allegations, including
 18 allegations as to other defendants, McIntosh alleges that it does not have
 19 sufficient information or belief on the subject to enable it to answer any of the
 20 allegations in those paragraphs and, basing its denial on that ground, denies each
 21 and every allegation contained therein generally and specifically in each and
 22 every part thereof.

23 **II. AFFIRMATIVE DEFENSES**

24 7. FIRST AFFIRMATIVE DEFENSE (Fair Use). McIntosh asserts the
 25 affirmative defense of Fair Use pursuant to Section 107 of the Copyright Act.

26 8. SECOND AFFIRMATIVE DEFENSE (Indemnification). McIntosh
 27 asserts the affirmative defense of indemnification. McIntosh alleges that any
 28 damages or liability claimed by the plaintiff were caused by the actions or

1 omissions of a third party, for which McIntosh is entitled to be indemnified by
2 said third party. McIntosh further asserts that any recovery the plaintiff should by
3 sought from the third party responsible for the alleged damages or liability.

4 9. THIRD AFFIRMATIVE DEFENSE (Contribution). McIntosh
5 asserts the affirmative defense of contribution. McIntosh demands that if it is
6 found liable for any damages or liability claimed by the plaintiff, such liability
7 should be apportioned among other responsible parties who may be jointly liable.
8 McIntosh seeks contribution from these other responsible parties to share in the
9 payment of any damages or liability imposed by the court.

10 10. FOURTH AFFIRMATIVE DEFENSE (Principal-Agent
11 Relationship). McIntosh asserts the affirmative defense of Principal-Agent
12 Relationship. McIntosh alleges that at all times of the incident giving rise to the
13 plaintiffs claims, McIntosh, was acting as an agent on behalf of a disclosed
14 principal, Defendant Deertrail Development, LLC. McIntosh further contends
15 that all actions taken were done so under the lawful instruction and authority of
16 the controlling party in the principal-agent relationship, Defendant Deertrail
17 Development, LLC.

18 11. FIFTH AFFIRMATIVE DEFENSE (Lack of Originality). McIntosh
19 asserts the affirmative defense of Lack of Originality. McIntosh alleges that the
20 allegedly infringed work lacks the requisite originality for copyright protection.

21 12. SIXTH AFFIRMATIVE DEFENSE (Copyright Misuse). McIntosh
22 asserts the affirmative defense of Copyright Misuse. McIntosh alleges that
23 plaintiff has engaged in copyright misuse to stifle competition or exert control
24 beyond the scope of copyright law.

25 13. SEVENTH AFFIRMATIVE DEFENSE (Innocent Infringer
26 Defense). McIntosh asserts the affirmative defense of Innocent Infringement
27 under Section 504. McIntosh alleges that if infringement did occur, McIntosh
28 was only not aware that its use of the work infringed the plaintiffs copyright, but

1 also that it had no reason to believe that its acts constituted infringement.

2 14. EIGHTH AFFIRMATIVE DEFENSE (Estoppel). McIntosh asserts
3 the affirmative defense of Estoppel. McIntosh alleges that the plaintiff is barred
4 from asserting copyright infringement due to their prior conduct or
5 representations.

6 15. NINTH AFFIRMATIVE DEFENSE (Unclean Hands). McIntosh
7 asserts the affirmative defense of Unclean Hands. McIntosh alleges that the
8 plaintiff engaged in improper conduct, such as copyright infringement
9 themselves, which disqualifies them from seeking relief.

10 16. TENTH AFFIRMATIVE DEFENSE (First Amendment). McIntosh
11 asserts the affirmative defense of First Amendment protection. McIntosh alleges
12 that its actions are protected by the First Amendment's guarantee of freedom of
13 speech and right to freedom of expression.

14 **III. DEMAND FOR JURY TRIAL**

15 17. Pursuant to Federal Rule of Civil Procedure 38 and Civil Local Rule
16 201, McIntosh demands a jury trial on all issues present in the First Amended
17 Complaint that are triable by a jury.

18
19
20 Dated: February 6, 2024

MURTAUGH TREGLIA STERN & DEILY LLP

21
22 Bv: 

23 David A. Ericksen
24 Attorneys for Defendant/Cross-
25 Defendant MCINTOSH &
26 ASSOCIATES ENGINEERING,
27 INC.
28